

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 01-cv-4092-UNA/Turnoff

UNITED STATES OF AMERICA,

Plaintiff,

TRACT NO. 534-16

(East Everglades)

v.

1.25 ACRES OF LAND, MORE OR LESS,  
IN THE COUNTY OF MIAMI-DADE, STATE  
OF FLORIDA; and UPPER HAVERFORD  
ASSET MANAGEMENT CORPORATION,  
et al., and UNKNOWN OWNERS,

Defendants.

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**REPORT AND RECOMMENDATION**

**THIS CAUSE** is before the Court on Plaintiff's Motion to Dismiss Interested Parties **[DE 38]**, and Plaintiff's Motion for Entry of Judgment as to Just Compensation **[DE 45]**. The Court has reviewed the Motions and the file in this cause and makes the following findings.

On October 2, 2001, Plaintiff filed a Complaint in condemnation pursuant to a declaration of taking against the Defendant property and deposited the sum of \$1,500.00 into the registry of the Court representing the amount of just compensation for the taking of same. **[DE 1, 6]**. Upon deposit of said amount into the registry of the Court, title to the subject property vested in the United States of America by operation of law. 40 U.S.C. § 3114(b) (2005).

On Schedule "C" of the Complaint, Upper Haverford Asset Management Corp., Trustee, (hereinafter, "Upper Haverford"), appears as the purported owner of the subject property. **[DE 1, Schedule "C"]**. The following appear as parties who may have or claim an interest in the land: Edward Oswald (deceased); unknown heirs and devisees of Edward Oswald; Nancy Richards, f/k/a Nancy Oswald, (niece of Edward Oswald); Richard Oswald (nephew of Edward Oswald); Sandra

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K. Bonkosky, f/k/a Sandra K. Oswald, (niece of Edward Oswald); and the Miami-Dade Tax Collector ("Tax Collector"), by virtue of a possible lien for real property taxes. Id.

On February 1, 2008, Plaintiff filed a Motion to Dismiss Interested Parties with respect to Nancy Richards and the unknown heirs and devisees of Edward Oswald (deceased). [DE 38]. The other parties listed in Schedule C have been dismissed from the case upon the filing of Disclaimers: Richard Oswald [DE 22]; and Sandra K. Bonkosky [DE 24]. Moreover, the Tax Collector filed an Answer indicating that it had no further interest in the case because there were no delinquent taxes associated with the subject property. [DE 14]. Plaintiff states that it has sent correspondence and disclaimers to Nancy Richards, who was properly served in this action, but she has failed to respond. Id.

The record indicates that Upper Haverford acquired the subject property at a public sale via tax certificate. A Tax Deed issued in the name of Upper Haverford which extinguished all interest held by Edward Oswald (deceased) to the subject property. Thus, any interest held by Nancy Richards, as Edward Oswald's niece, should have been extinguished also. The undersigned finds that Nancy Richards' interests in the property were extinguished by the Tax Deed. Accordingly, the undersigned recommends that Nancy Richards be **DISMISSED** as a party to this action.

Additionally, Plaintiff published a Notice of Condemnation against the unknown heirs and devisees of Edward Oswald (deceased) for three consecutive weeks without response. Id. The Court, in its discretion, takes judicial notice of Exhibit A to Plaintiff's Motion to Dismiss and recommends *sua sponte* a **DISMISSAL** of the unknown heirs and devisees of Edward Oswald (deceased) from the case. [DE 38, Exh. A].

On August 14, 2008, Plaintiff filed a Motion for Entry of Judgment as to Just Compensation. [DE 45]. The Motion indicated that this case was heard before the Land Commissioners as part

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of Group 41. The Land Commissioners issued a Report on May 15, 2007. **[DE 35]**. The Report indicated a determination of Just Compensation for the subject property in the amount of \$650.00 to Upper Haverford. Id. Ralph DeFronzo, on behalf of Upper Haverford, filed a letter with the Court contesting the amount of just compensation awarded after trial. The letter included correspondence from the United State Department of the Interior, National Park Service, in which the parties had agreed to compensation in the amount of \$1,500.00. The Court entered an Order construing Mr. DeFronzo's letter as an Objection to the Report of Land Commissioners. **[DE 36]**. Mr. DeFronzo was directed to make any future filings concerning Upper Haverford through counsel. Id. No counsel has appeared on behalf of Upper Haverford. It appears that Upper Haverford, now a dissolved corporation, assigned its interest in the subject property to Bullet Cement, an active Florida corporation, as trustee.

The government represents that it honors its previous agreement with Mr. DeFronzo regarding the amount of just compensation for the subject property to be paid to Defendant Upper Haverford. Thus, all issues raised in Mr. DeFronzo's objection are moot.

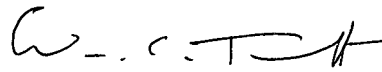
Accordingly, it is **RESPECTFULLY RECOMMENDED** that:

1. The Motion to Dismiss **[DE 38]** be **GRANTED**. The Defendants, Nancy Richards and the unknown heirs and devisees of Edward Oswald (deceased), should be **DISMISSED** as parties to this action.
2. The Joint Motion for Entry of Stipulated Judgment as to Just Compensation **[DE 45]** be **GRANTED**.
3. The Objections filed by Defendant Ralph DeFronzo **[DE 36]** be **DEEMED MOOT**.
4. The Report of Land Commissioners **[DE 35]** be **DEEMED MOOT** with respect to this case.

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Pursuant to Local Magistrate Rule 4(b), the parties have ten (10) days from service of this Report and Recommendation to serve and file written objections, if any, with the Honorable Federico A. Moreno, Chief United States District Judge. Failure to file timely objections shall bar the parties from attacking on appeal the factual findings contained herein. Loconte v. Dugger, 847 F.2d 745 (11<sup>th</sup> Cir. 1988); R.T.C. v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11<sup>th</sup> Cir. 1993).

**RESPECTFULLY RECOMMENDED** on this 10<sup>th</sup> day of August 2009.



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**WILLIAM C. TURNOFF**  
**UNITED STATES MAGISTRATE JUDGE**

cc: Hon. Federico A. Moreno  
Service List

Ralph DeFronzo  
PO Box 144097  
Coral Gables, FL 33114-4097